

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,)	Application No. 911-031.01
on its own motion, to establish)	
surcharges assessed on users of)	
prepaid wireless service and,)	ORDER REJECTING PROPOSED
methods for the collection and)	PREPAID METHOD
remittance of surcharges from)	
carriers offering prepaid)	
wireless services: TracFone)	
Wireless, Inc.)	Entered: April 1, 2008

BY THE COMMISSION:

On June 19, 2007, the Nebraska Public Service Commission (Commission) opened this proceeding, on its own motion, to establish surcharges assessed on users of prepaid wireless service and methods for the collection and remittance of surcharges from carriers offering prepaid wireless services as required by the Enhanced Wireless 911 Services Act, Neb. Rev. Stat. § 86-441, et seq. (Cum. Supp. 2006), as amended by Nebraska Laws LB 661 [2007] (the Act).

All wireless carriers offering prepaid wireless services were required to notify the Commission in writing no later than September 1, 2007, if they intend to utilize one of the three established methods, as to which of the three methods it will utilize for the collection and remittance of the enhanced wireless 911 surcharge.

On or about September 1, 2007, TracFone Wireless, Inc. filed an application to use an alternative method for the collection and remittance of the enhanced wireless 911 surcharge. In response to a request by the Commission, TracFone submitted additional explanation regarding their proposed method on October 10, 2007. TracFone further supplemented its filing on October 31, 2007. Hearing on this matter took place on January 16, 2008.

E V I D E N C E

Richard B. Salzman provided pre-filed testimony which was entered into the record as Exhibit No. 5 and further testified during the hearing in support of TracFone's proposed method for the collection and remittance of prepaid wireless E911 surcharges. Mr. Salzman is executive vice president and general counsel for TracFone.¹ TracFone proposes that it collect one

¹ Direct Testimony of Richard Salzman, Trans. 4:5-9.

percent (1%) on any sales of airtime made directly by TracFone.² However, no surcharge would be collected or remitted for any service purchased through a retailer.³ Mr. Salzman testified that approximately 10% to 15% of TracFone's revenues is attributable to direct sales by TracFone versus retail sales by independent retail stores.⁴ Mr. Salzman further testified that for all sales, whether the sales are between the customer and TracFone or the customer and a third-party retailer, some type of contact occurs between that customer and TracFone.⁵ TracFone has proposed a similar method in other states; however, the proposal has not been approved in other states.⁶ According to Mr. Salzman, until it began collecting from its direct sales, TracFone has never collected the surcharge in any state.⁷ However, TracFone does remit prepaid wireless 911 surcharges in other states even if not collected from customers.⁸

Jeffrey L. Pursley, testified regarding Commission staff's recommendation with respect to TracFone's proposed method.⁹ Additionally, Mr. Pursley filed prefiled testimony which was entered into the record as Exhibit No. 6. Mr. Pursley recommended that TracFone's proposed methodology be rejected and that TracFone be required to adopt one of the three established methods by a date certain and be subject to fines for non-compliance.¹⁰

FINDINGS AND OPINION

Pursuant to the Act, a distinction is made in Nebraska law between traditionally billed wireless carriers and prepaid wireless carriers with respect to the collection and remittance of the enhanced wireless 911 surcharge. With respect to traditional billed wireless carriers, the law requires the following:

Each wireless carrier shall collect: (a) A surcharge of up to seventy cents, except as provided in subdivision (1)(b) of this subsection and as otherwise provided in this section with respect to prepaid wireless service, on all active telephone numbers or functional equivalents every month from users of

² Testimony of Richard B. Salzman, Exhibit No. 5, 8:12-13.

³ Ex. 5, 9:20-21.

⁴ Cross-Examination of Richard Salzman, Trans. 6:7-16.

⁵ Salzman Cross, Trans. 7:1-15.

⁶ Salzman Cross, Trans. 8:1-4 and 9:19-24.

⁷ Salzman Cross, Trans. 9:9-18.

⁸ Salzman Cross, Trans. 7:24-8:11.

⁹ Direct Testimony of Jeffrey Pursley, Trans. 23:1.

¹⁰ Pursley Direct, Trans. 26:8-14.

wireless service and shall remit the surcharge in accordance with section 86-459; or (b) A surcharge of up to fifty cents, except as otherwise provided in this section with respect to prepaid wireless service, on all active telephone numbers or functional equivalents every month from users of wireless service whos primary place of use is in a county containing a city of the metropolitan class and shall remit the surcharge in accordance with section 86-459. The wireless carrier is not liable for any surcharge not paid by a customer.¹¹

However, the Legislature recognized differences between the billing methods of wireless carriers who offer prepaid wireless service who may require flexibility with respect to the enhanced wireless 911 surcharges and granted the Commission delegated authority to establish surcharges for those carriers. "The commission shall establish surcharges comparable to the surcharge assessed on other users of wireless services and shall develop methods for collection and remittance of such surcharges from wireless carriers offering prepaid wireless services."¹²

The Legislature further stated that it intended that "all users of prepaid wireless services pay an amount **comparable** to the amount paid by users of wireless services that are not prepaid in support of statewide wireless enhanced 911 service. It is also the intent of the Legislature that **whenever possible** such amounts be collected from the users of such prepaid wireless services."¹³ Ultimately, however, the Legislature placed the burden of remitting comparable amounts on the prepaid wireless carrier, stating: "The duty to remit any surcharges established pursuant to subsection (5) of this section is the responsibility of the wireless carrier."¹⁴

The method proposed by TracFone does not result in the remittance of comparable surcharges to those established for users of wireless services other than prepaid service. According to Mr. Salzman's testimony between 85 and 90% of TracFone's revenue would not be subject to any surcharge, suggesting that significant numbers of users of TracFone's prepaid wireless service would not be paying any amount comparable to the amount paid by users of other wireless services.

¹¹ Neb. Rev. Stat. § 86-457(1) (2007 Supp.).

¹² § 86-457(5).

¹³ § 86-457(4) (emphasis added).

¹⁴ § 86-457 (6).

Therefore, the Commission finds that TracFone's proposed method should not be approved. TracFone shall either adopt one of the three established methods or propose a suitable method which is not limited only to direct sales to users of its service no later than fourteen (14) days from the date of this order.

O R D E R

IT IS THEREFORE ORDERED by the Commission that the alternative method proposed by TracFone is not approved.

IT IS FURTHER ORDERED that TracFone Wireless, Inc. shall either adopt one of the three established methods or propose a suitable method which is not limited only to direct sales to users of its service no later than fourteen (14) days from the date of this order.

MADE AND ENTERED at Lincoln, Nebraska, this 1st day of April, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director